



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,989	07/28/2006	Michael David Barker	PB60708	4223
20462 7590 03/29/2010 GlaxoSmithKline GLOBAL PATENTS -US, UW2220 P. O. BOX 1539 KING OF PRUSSIA, PA 19406-0939				
EXAMINER				
O DELL, DAVID K				
ART UNIT		PAPER NUMBER		
1625				
NOTIFICATION DATE		DELIVERY MODE		
03/29/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

US\_cipkop@gsk.com

***Response to Restriction Election***

1. Applicant's election of Group I and the species (Example 1: [N-Cyclopropyl-4-methyl-3-{1-[(1-methylethyl)sulfonyl]IH-pyrazolo[3,4-c]pyridin-5-yl}benzamide) in the reply filed on January 18, 2010 is acknowledged. The election was made with traverse, and the examiner finds the arguments unpersuasive. The traversal is on the grounds that the "even under the PCT guidelines the process of making and a use are included within the unity of invention for compounds." While it is unclear what is meant by this statement, the claims as presented were found to lack a special technical feature and unity of invention is absent. Without unity of invention processes of making and using are clearly separable and the examiner followed the appropriate course. It is worth pointing out that should applicant's product claims be found allowable the method of making that includes all the limitations of the allowable product claims will be rejoined. The response of January 18, 2010 failed to elect "a condition or disease state mediated by p38 kinase activity or mediated by cytokines produced by the activity of p38 kinase" intended use condition of claim 12. Claim 12 is listed as withdrawn in the current set of amendments, however it is a compound claim so it is examined with compounds and the status identifier is wrong. Functional language as that of the instant claims carries no patentable weight in claims for compositions of matter see *Union Oil Co. of California v. Atlantic Richfield Co.*, 54 USPQ2d 1227 where "composition claims cannot, as the appellant refiners argue, embrace only certain uses of that composition. (citing *In Re Spada*) Otherwise these composition claims would mutate into method claims." The examiner tried to reach the applicant's representative by phone but was unsuccessful.

Group 1, Claims 1-10, 12, 16-20 drawn to compounds and compositions having a pyrazolo pyridine core, where A is pyrazole and Z1 is N or N=O and Z2 is CH, or Z1 is CH and Z2 is N or N=O. If this group is elected, a further election of a single disclosed species of compound is also required. In addition further election of an intended use is required.

### ***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David K. O'Dell whose telephone number is (571)272-9071. The examiner can normally be reached on Monday-Friday 9:00 A.M. to 6:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JANET ANDRES can be reached on (571)272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David K. O'Dell/  
Examiner, Art Unit 1625

/Rita J. Desai/

Application/Control Number: 10/587,989  
Art Unit: 1625

Page 4

Primary Examiner, Art Unit 1625